

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOE LYNN PADDOCK,)	
)	
Petitioner,)	
)	
v.)	CIV-05-707-R
)	
STATE OF OKLAHOMA AND)	
ERIC FRANKLIN, Warden,)	
)	
Respondent.)	

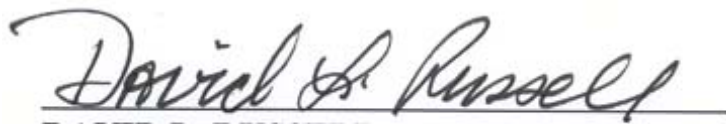
ORDER

Before the Court are the Report and Recommendation of United States Magistrate Judge Bana Roberts entered November 17, 2006 [Doc. No. 16] and Petitioner's Objection to the Report and Recommendation filed December 7, 2006 [Doc. No. 17].

Petitioner does not object to the Report and Recommendation with respect to the issues actually addressed therein. Rather, Petitioner's entire Objection to the Report and Recommendation is that the alleged prosecutorial misconduct affected the sentencing inasmuch as the jury specifically recommended that the sentences on Counts One and Two be served consecutively to each other. The Magistrate Judge did not address this aspect of Petitioner's sentence and the Court finds that Petitioner did raise this issue before the Magistrate Judge in his "Respondent [Sic] to Attorney Generals [sic] Response For Writ of Habeas Corpus [Doc. No. 13], although Petitioner apparently inadvertently stated in that response that the foreman recommended that the sentences on counts one and two be "Concurrent." *See* Doc. No. 13 at p. 2.

In accordance with the foregoing, the Court ADOPTS the Report and Recommendation but REMANDS this matter to the Magistrate Judge to address the issue of whether prosecutorial misconduct affected the jury's recommendation as to how the sentences on Counts One and Two were to be served. In this regard, the Magistrate Judge should consider whether Petitioner raised that issue on direct appeal.

It is so ordered this 15th day of December, 2006.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE